

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CRAIG CUNNINGHAM,

Plaintiff,

v.

Case Number 15-00847

Honorable David M. Lawson

Magistrate Judge Barbara D. Holmes

THE 7 FIGURE WEALTH CORPORATION,
CHRISTIAN KINNEY, CORAZON
MANAGEMENT GROUP, INC., SUSIE
TREMBLAY-BROWN, MULTIPLEX
SYSTEMS, INC., MY MINDS EYE, LLC,
and JL NET BARGAINS, INC.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
SETTING ASIDE DEFAULT AS TO DEFENDANT KINNEY**

Presently before the Court is the report issued on September 10, 2019 by Magistrate Judge Barbara D. Holmes pursuant to 28 U.S.C. § 636(b), recommending that the Court grant defendant Oscar Christian Kinney's motion to set aside default, vacate the corrected judgment entered on January 16, 2018 as to Kinney, order plaintiff Craig Cunningham and his assignee James Shelton to return the \$22,500 seized from Kinney's account and relinquish any control they maintain over Kinney's accounts, dismiss Kinney without prejudice as a defendant under Fed R. Civ. P. 21 for lack of effective service of process, and deny the plaintiff's request to strike Kinney's motion to set aside default.

The plaintiff's assignee, James Shelton, filed an objection explaining that he re-assigned his interest back to the plaintiff, does not possess any funds from Kinney's account, and retains no control over Kinney's accounts. Shelton does not otherwise object to any other portion of the report and recommendation. Moreover, the plaintiff did not file an objection to the report. The

parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge and will grant Shelton's relief.

Accordingly, it is **ORDERED** that the report and recommendation (ECF No. 302) is **ADOPTED**.

It is further **ORDERED** that defendant Kinney's motion to set aside default judgment (ECF No. 294) is **GRANTED**.

It is further **ORDERED** that the corrected judgment entered on January 16, 2018 (ECF No. 274) is **VACATED** as to Kinney.

It is further **ORDERED** that Craig Cunningham shall return the \$22,500 seized from Kinney's account and relinquish any control he maintains over Kinney's accounts, if any.

It is further **ORDERED** that Kinney is **DISMISSED** without prejudice as a defendant under Fed. R. Civ. P. 21 for lack of effective service under Fed. R. Civ. P. 4(m).

It is further **ORDERED** that Cunningham's request that Kinney's motion to set aside default be stricken (ECF No. 299) is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: October 25, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on October 25, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI